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17 *Co-Lead Counsel*

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN JOSE DIVISION)

20 In re: HP INKJET PRINTER LITIGATION) MASTER FILE NO. C053580 JF
21 _____) [PROPOSED] PRETRIAL ORDER NO. 1
22 This Document Relates To:)
23 All Actions)
24 _____)
25)
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ORDER

The parties to this coordinated proceeding have conferred and submit this stipulated case management proposal including the organization of plaintiffs' counsel. This Order shall govern the pre-trial proceedings and trial of these coordinated actions and all subsequent related actions, which are added-on, transferred or otherwise coordinated as part of this coordination proceeding.

I. CONSOLIDATION OF RELATED ACTIONS

7 1. The following actions are hereby consolidated pursuant to Rule 42(a) of the
8 Federal Rules of Civil Procedure.

- 9 a. *Ciolino v. Hewlett-Packard Company*, Civil Action No. C053580JF; and
10 b. *Feder v. Hewlett-Packard Company*, Civil Action No. C0502462JF.

11 This consolidation is for all proceedings.

12 2. Any actions filed in, or transferred in, or transferred to this District which arise
13 from facts similar to those in the present action are hereby consolidated pursuant to Rule 42(a) of
14 the Federal Rules of Civil Procedure.

15 3. The clerk shall establish and maintain a Master Docket and Master File for this
16 proceeding under the caption "*In re HP Inkjet Printer Litigation*," Master File No. C053580 JF.
17 All orders, pleadings, motions and other documents, when filed and docketed in the Master File,
18 will be deemed filed and docketed in each individual case.

19 4. Henceforth, every pleading or other such document in this coordination
20 proceeding, which ordinarily contains a pleading caption, shall bear the following caption:

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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
(SAN JOSE DIVISION)**

In re: HP INKJET PRINTER LITIGATION } MASTER FILE NO. C053580 JF
This Document Relates To: } [PROPOSED] PRETRIAL ORDER NO. 1
All Actions }

II. ORGANIZATION OF PLAINTIFFS' COUNSEL

12 5. The organizational structure of plaintiffs' counsel established by this Order shall
13 bind plaintiffs' counsel in the Consolidated Actions, including any action subsequently governed
14 by this Order.

15 6. The Court appoints the following individuals to act on behalf of plaintiffs in the
16 Consolidated Actions, including any plaintiffs subsequently governed by this Order, with the
17 responsibilities hereinafter prescribed.

a. As Co-Lead Counsel:

- (1) Bruce L. Simon of Cotchett, Pitre, Simon & McCarthy;
 - (2) Jonathan Shub of Sheller, Ludwig & Badey; and
 - (3) Patrick McNicholas of McNicholas & McNicholas LLP.

b. As members of the Executive Committee:

- (1) Michael D. Liberty of the Law Offices of Michael D. Liberty;
 - (2) Stephen M. Garcia of The Garcia Law Firm;
 - (3) Mark A. Chavez of Chavez & Gertler LLP;
 - (4) Steven N. Berk of Cuneo, Waldman & Gilbert, LLC;
 - (5) David R. Buchanan of Seeger Weiss LLP;
 - (6) Marc H. Edelson of Edelson & Associates, LLC;

(7) Scott E. Shapiro of Law Offices of Scott E. Shapiro, P.C.

c. As Chair of the Executive Committee:

Steven N. Berk of Cuneo, Waldman & Gilbert, LLC.

d. As Liaison Counsel:

Bruce L. Simon of Cotchett, Pitre, Simon & McCarthy.

6 7. Co-Lead Counsel. Co-Lead Counsel shall have day-to-day responsibility for the
7 conduct of the consolidated litigation; shall determine, after consultation with the Executive
8 Committee and its chair, how to prosecute the case and shall initiate, coordinate and supervise
9 the efforts of plaintiffs' counsel in the consolidated action in the areas of discovery, briefing, trial
10 and settlement. Co-Lead Counsel shall also be deemed to be members of the Executive
11 Committee.

12 8. Co-Lead Counsel shall designate responsibilities for specific tasks to plaintiffs'
13 counsel in the consolidated cases in a manner to assure that pretrial preparation is conducted
14 effectively, efficiently and economically; shall assist the Executive Committee and its chair in
15 maintaining communication among counsel; and shall monitor the activities of plaintiffs' counsel
16 to assure that schedules are met and unnecessary expenditures of time and money are avoided.
17 Co-Lead Counsel shall maintain the official service list of all plaintiffs and plaintiffs' counsel in
18 the consolidated and coordinated actions, including their addresses. Co-Lead Counsel shall
19 perform whatever any additional functions that may be assigned to them by the Court.

20 9. Executive Committee. To the extent delegated by Co-Lead Counsel, members of
21 the Executive Committee and its Chair shall execute the orders of the Court concerning the
22 conduct of the litigation; formulate and draft material for plaintiffs in the consolidated actions,
23 including interrogatories, document requests, pleadings, briefs and motion papers; and perform
24 such other tasks as are delegated by Co-Lead Counsel, including, for example, the taking of
25 depositions upon oral examination. Co-Lead Counsel and the Executive Committee members
26 may organize whatever subordinate bodies or subcommittees they deem expedient, such as
27 discovery committees and briefing committees.

1 10. Chair of the Executive Committee. The Chair of the Executive Committee shall
2 be responsible for overseeing the work of that Committee, and coordinating the assignments
3 established by the Co-Leads. The Chair may participate in the conferences and planning
4 meetings conducted by Co-Leads.

5 11. Liaison Counsel. Plaintiffs' Liaison Counsel shall be the contact between
6 plaintiffs' counsel and the Court. Liaison Counsel shall serve as spokesmen for plaintiffs in the
7 consolidated actions in presenting those plaintiffs' views to the Court and in acting on behalf of
8 those plaintiffs' views in matters of joint or common action. This does not diminish the right of
9 the other counsel to be heard on matters not susceptible to joint or common action or when
10 genuine and substantial disagreement exists among counsel. Plaintiffs' Liaison Counsel shall
11 forward any notices from the Court and report upon any communications to Co-Lead Counsel, to
12 members of the plaintiffs' Executive Committee, and to other plaintiffs' counsel as appropriate.

13 12. Defendants shall serve all notices, orders, pleadings, motions, discovery, and
14 memoranda relating to the Consolidated Actions on Co-Lead Counsel, which shall constitute
15 service on all plaintiffs' counsel. An agreement reached with any Co-Lead Counsel or Co-Lead
16 Counsel's designee shall be binding on all other plaintiffs' counsel in the Consolidated Actions.

17 13. Defendants shall effect service of papers on the members of plaintiffs' Co-Lead
18 Counsel, as applicable, by email and either: (i) overnight mail service or comparable delivery; (ii)
19 telecopier or (iii) hand delivery. Plaintiffs in the Consolidated Action shall effect service of
20 papers on defendants by serving a copy of the same on all defendants' counsel by email and
21 either: (i) overnight mail service or comparable delivery; (ii) telecopier or (iii) hand delivery.

22 **III. APPLICATION OF THIS ORDER TO SUBSEQUENT CASES**

23 14. This Pretrial Order No. 1 shall apply to each related case subsequently added-on
24 or transferred to this coordination proceeding. When an action is added-on as part of these
25 proceedings, plaintiffs' Liaison Counsel shall serve a file-endorsed copy of this Pretrial Order
26 No. 1 to the attorneys for the plaintiff(s) in the add-on case, and direct that this Pretrial Order No.
27 1 be served upon any new defendant(s) in the add-on case, or their counsel. A new party
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1 objecting to the application of any provision of this Order must file a request for relief from this
2 Order within ten (10) days of service of this Order upon that party.

3 **IV. STATE COURT COORDINATED PROCEEDINGS**

4 15. Related state court litigation has been coordinated before the Honorable Jack
5 Komar as Judicial Council of California Proceeding No. 4423. A case management conference
6 in that coordinated proceeding is scheduled for November 15, 2005. All parties in that
7 proceeding, i.e., Ken Weingart, Deborah Tyler, Clifford Obi, and Hewlett-Packard Company, by
8 and through their attorneys have stipulated to proceed in federal court as part of this federal
9 coordinated proceeding. Accordingly, plaintiffs will dismiss, without prejudice, their state court
10 actions upon entry of this Pre-Trial Order No. 1.

11 **V. CONSOLIDATED AMENDED COMPLAINT**

12 16. A Consolidated Amended Complaint shall be filed and served on or before
13 October 24, 2005. Defendant Hewlett-Packard Company's responsive pleading shall be filed and
14 served on December 12, 2005. The parties will meet and confer, and consult the Court, on a
15 briefing schedule and hearing date thereon.

16 **VI. RULE 26 INITIAL DISCLOSURE**

17 17. The parties met and conferred on October 6, 2005 per Rule 26. The parties will
18 exchange their Rule 26 Initial Disclosures on November 11, 2005.

19 **VII. DISCOVERY**

20 18. The parties will meet and confer further on the nature, scope and method of
21 production. Defendant Hewlett-Packard Company's document production will start on
22 November 11, 2005, and will be completed on a rolling basis.

23 **VIII. STATUS CONFERENCE**

24 19. A Status Conference will be held on October 24, 2005 at 10:30 a.m. in lieu of a
25 Case Management Conference.

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1 **IX. MODIFICATION OF THIS ORDER**

2 20. This order may be modified or supplemented by the Court or on motion by any
3 party for good cause shown.

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5 **IT IS SO ORDERED.**

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7 DATED: 10/19/05

/s/electronic signature authorized

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HON. JEREMY FOGEL
UNITED STATES DISTRICT COURT

10 Approved as to form:

11 DATED: 10-17-05

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13 BRUCE L. SIMON
Proposed Co-Lead Counsel for Plaintiffs

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15 Approved as to form:

16 DATED: _____

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19 SAMUEL G. LIVERSIDGE
Attorney for Defendant